IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 4TH SEPTEMBER 2007 / 13TH BHADRA 1929

OP.No. 30720 of 1999(F)

PETITIONER:

AVANAMPARA MALA DEVASWOM REPRESENTED
BY ITS DEFACTO TRUSTEE, ERAVIDHAYARU E.PARAMESWARAN,
PANDARATHIL, VAKKA VANJI PUZHA MADOM,
MANNADI KIZHAKKU KALIYIKKU PADINJARU MURI,
MANNADI P.O.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS:
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1. DISTRICT COLLECTOR, PATHANAMTHITTA

2. SECRETARY TO GOVERNMENT,
MINING AND GEOLOGY DEPARTMENT,
GOVT. SECRETARIAT,
THIRUVANANTHAPURAM.

3. GOPINATHA PILLAI, POOJA NIVAS,
ADOOR P.O.

4. GEOLOGIST, PATHANAMTHITTA.

5. RESURVEY SUPERINTENDENT, ADOOR.

BY ADV. SRI.V.N.ACHUTHA KURUP
SRI.B.S.SWATHY KUMAR
GOVERNMENT PLEADER SRI. BENJAMIN PAUL

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 04/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 30720 of 1999

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE PROCEEDINGS NO.D.Dis.31337/66 DATED 5.8.1967 OF THE DISTRICT COLLECTOR, QUILON

EXT.P2: TRUE COPY OF THE PROCEEDINGS FORWARDED BY ASSISTANT COMMISSIONER KOTTARAKARA TO THE COMMISSIONER DATED 10.12.1996

EXT.P3: TRUE COPY OF THE PETITION DATED 8.7.1999 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT.P4: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER BEFORE HE 5TH RESPONDENT

EXT.P5: TRUE COPY OF THE MASS PETITION SUBMITTED BY THE RESIDENTS OF THE LOCALITY BEFORE THE 1ST RESPONDENT DATED 5.3.1997

EXT.P6: TRUE COPY OF THE NEWS ITEM IN KERALA KAUMUDI DAILY DATED 14TH JANUARY.

RESPONDENTS EXHIBITS:

EXT. R3 (1): TRUE COPY OF THE ORDER IN O.A. 68/03 DATED 8.5.1984 OF THE LAND TRIBUNAL, QUILON.

EXT. R3 (2): TRUE COPY OF THE QUARRYING PERMIT NO.287/99-2000/Q8/MM/GS/22/DOPTA/M/2000 DATED 6.1.2000 ISSUED BY THE GEOLOGIST TO THE 3RD RESPONDENT

EXT. R3 (3): TRUE COPY OF THE AGREEMENT DT. 1.12.1999 ENTERED INTO BETWEEN THE 3RD RESPONDENT AND P. THOMAS

EXT. R3 (4): TRUE COPY OF THE FORM 18 ISSUED UNDER RULE 156 (3) ISSUED TO SRI. P. THOMAS BY THE JT. CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, MADRAS

EXT. R3 (5): TRUE COPY OF FORM NO.30 ISSUED UNDER RULE 144 BY THE DY. CHIEF CONTROLLER OF EXPLOSIVES, SOUTH CIRCLE, MADRAS, DATED 4.1.1999

EXT. R3 (6): TRUE COPY OF THE LETTER DATED 1.1.2000 ISSUED BY SRI.P. THOMAS TO THE 3RD RESPONDENT

/TRUE COPY/

ANTONY DOMINIC,J.

O.P No. 30720 of 1999

Dated this the 4th day of September, 2007

J U D G M E N T

The prayer in this writ petition is to direct the 1st respondent to consider Exhibit-P3 and to prevent blasting and quarrying of granite from the property in Sy. No.401/1 (Re Sy. No.406/7) of Kadambanad village. Petitioner is also seeking consequential reliefs.

2. It is stated that the petitioner is a Devaswom and that the quarrying that is carried on by the 3rd respondent in the property in question is causing damage to the temple in the neighbourhood. According to the petitioner, Exhibits P3 and P5 complaints have been made before the 1st respondent as early as on 8.7.1999 and 5.3.1997 respectively, and that further action has not been taken on these complaints as a result of which quarrying is continued causing damage to the Devaswam and the Temple.

3. Counter Affidavits have been filed by the respondents. The 3rd respondent contends that his father had taken the property in question from the petitioner's father as early as in 1951. On the commencement of the Land Reforms

Act, 3rd respondent's father made an application before the Land Tribunal under the Land Reforms Act which was rejected. Appeal filed against the said order was allowed and the matter was remitted to the said Tribunal for fresh consideration. Petitioner also got himself impleaded in the proceedings. By Ext. R3 (1) order of the Tribunal in O.A. 68/83 dated 8.5.1984 application was allowed. Thereafter, a querry was opened in the land. It is stated that he has obtained all necessary licences and Exhibit R3 (2) quarrying permit is produced in support thereof. It is also stated that he later on entered into an agreement with another licensee who was permitted to continue quarrying in the land. Third respondent also says that since then the petitioner who was one of the landlord, started making complains against him before the various authorities only to harass him and Exhibits P3 and P4 are the complains so made by him.

4. The Learned Senior Counsel submits that the complaints made by the petitioner lacks bona fides and respondents were justified in ignoring the same. I have considered the submissions made by the counsel on both sides. It is seen that petitioner has no claim or ownership over the land

in question. The land now belongs to the 3rd respondent and his brother. The 3rd respondent has produced necessary quarrying permit and licences issued by the authorities concerned and therefore he is entitled to quarry in the land subject to the conditions of the permit. Therefore, if quarrying is carried on in terms of the permit, the petitioner cannot object to the same. The 3rd respondent in his affidavit has asserted that quarrying was conducted strictly in terms of the licence. There is no affidavit in contradicting the claims of the 3rd respondent. It therefore follows that the complaints made lack in merit and the 1st respondent was justified in ignoring the same.

5. That apart, complaints which are produced in this writ petition were filed on 1997 and 1999. Now, after almost 10 years, there is no justification in directing the 1st respondent to consider these complaints I do not find any merit in this writ petition. The writ petition is only to be dismissed and I do so.

(ANTONY DOMINIC, JUDGE)

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ANTONY DOMINIC,J

O.P. NO. 30720 OF 1999

JUDGMENT

4TH SEPTEMBER, 2007